

Legal and Psychological Issues in Move-Away Cases
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Move Away Factors to Consider

- A. LaMusga is the most recent, most relevant case on the question of how to evaluate move-aways.**
1. The 'Short-form' of LaMusga:
 - a) Non-custodial parent must (still) establish detriment of move, and then:
 - 1) Permits re-evaluation of custody
 - 2) Based on best interests of child
 - 3) Impact of move on relationship with left parent now okay to include in analysis as a 'relevant factor'
 - 4) Non-custodial parent does not have to establish that a change of custody (to him or herself) is the only way to prevent detriment associated with the move.
 - 5) Reasons for the move are relevant, even if move in good faith
 - b) Trial court discretion has: discretion, discretion, discretion.
 - c) Factors listed in LaMusga to consider when evaluating best interests:
 - 1) Children's interest in stability and continuity in the custodial arrangement
 - 2) The distance of the move
 - 3) The age of the children
 - 4) The children's relationship with each parent
 - 5) The relationship between the parents including, but not limited to their ability to communicate and cooperate effectively and their willingness to put the interests of the children above their individual interests.
 - 6) The wishes of the children if they are mature enough for such an inquiry to be appropriate.
 - 7) The reasons for the proposed move.
 - 8) The extent to which the parents are currently sharing custody.
 2. **Detriment.** Because of the structure of LaMusga, the question of detriment is addressed first, as a pivotal, gate-keeping question. Evaluators therefore are interested in knowing how the law sees detriment, and what judges need to know in order to find detriment.
- B. Other cases, other legally defined factors**
1. Burgess factors, not included in LaMusga:
 - i. Child's community ties
 - ii. Child's health needs;
 - iii. Child's educational needs
 2. Factors from Family Code §3011
 - i. Any history of abuse by one parent or person seeking custody

- ii. Habitual, or continual illegal use of controlled substances or alcohol by either parent.
- 3. Family Code §3020 factors:
 - i. Child abuse or domestic violence
 - ii. Frequent and continuing contact
 - iii. If the above are in conflict, resolve in favor of safety.
- 4. Standard factors governing any evaluation, as found in California Rule of Court 5.220.

C. Factors cited in the psychological literature

- 1. Risk/Benefit analysis of William Austin:
 - i. Cognitive and emotional status of child
 - ii. Recency of separation/divorce
 - iii. Child's resources and needs;
 - iv. Degree of parental conflict;
 - v. Custodial parent's psychological resources;
 - vi. Economic considerations;
 - vii. Changing needs and wishes of the child;
 - viii. Potential visitation and transportation schedules.
- 2. Suggested by Phil Stahl, Ph.D.
 - i. Potential meaning of the move to the child if it does or does not occur
 - ii. Whether the moving parent will facilitate a positive relationship with the other parent over time.
 - iii. The history of the moving parent facilitating or interfering with the other parent's access.
 - iv. The child's ability to deal with change: coping skills.
 - v. The realities of the logistical aspects of the move;
 - vi. Whether the move represents a pattern of instability on the part of the moving parent;
 - vii. Alternatives considered.